Craig & Hamilton Meat Company, Inc. *and* General Teamsters Local 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 32-CA-5273

31 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 3 February 1984 Administrative Law Judge Jay R. Pollack issued the attached decision. Counsel for the General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in response to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] Counsel for the General Counsel contends that, in finding that the Respondent had no statutory obligation to furnish information requested by the Union, the judge relied on limited portions of letters the Respondent sent the Union during collective bargaining and ignored others. Counsel for the General Counsel cites, inter alia, an excerpt from the Respondent's 27 October 1983 letter to the Union stating that the Company does "not intend to be another of the 800,000 business casualties this year." Removed from context, this statement appears to support the General Counsel's contention that the Respondent had put its general financial condition at issue in resisting the Union's collective-bargaining demands. However, the portion of the letter where the sentence appears focuses on the Respondent's resolve to "gird for the continuing tough competition ahead," and is therefore expressing the Respondent's concern over potentially harmful consequences that would be felt by its business if it failed to respond to industry trends by redirecting its resources from meat processing to jobbing. Thus, placed in context, this and other language contained in collective-bargaining correspondence generated by the Respondent and cited by the General Counsel in his brief support the judge's conclusion that information sought by the Union does not pertain to claims advanced by the Respondent during negotiations. Accordingly, we adopt the judge's conclusion that the Respondent has not violated Sec. 8(a)(5) of the Act by refusing to supply such information.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Stockton, California, on December 22, 1983. The complaint, which issued on July 5, 1983, was based on a charge filed by General Teamsters Local 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union) on February 22, 1983. The issue raised by the pleadings relates to whether Craig & Hamilton Meat Company, Inc. (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing the furnish the Union with requested information allegedly relevant to the Union's performance of its collective-bargaining function.

All parties were given full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Based on the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a California corporation with an office and place of business in Stockton, California, engaged in the nonretail sale and distribution of meat and related products. During the 12 months prior to issuance of the complaint, Respondent sold and shipped goods valued in excess of $50,000 directly to customers located outside the State of California. Accordingly, it admits and I find Respondent to be an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The Union has been the exclusive collective-bargaining representative of a unit of Respondent's drivers since at least 1968.[1] The Union and Respondent have been party to a series of collective-bargaining agreements, the most recent of which was effective from October 1, 1979, to September 30, 1982. Accordingly, Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The instant case arose during negotiations between Respondent and the Union for an agreement to succeed their 1979-1982 agreement. By letter dated July 27, 1982,[2] the Union submitted its contract proposals to Respondent seeking a new 3-year agreement. On August 31, Respondent presented the Union with its "Comments and Counterproposals." In a covering letter submitted with its proposals, Respondent, through its attorney John E. Tate, stated:

> While we are not in any way pleading economic poverty, for it is none of the business of this Union as to where we get our money and where or how we spend it, you do know that not only the five giants in our industry are reported to do 80% of the beef business. The giants, IBP, Spencer, MBPXL, Morrell—you name it—are no longer content to merely slaughter and split. They are sending boxes

[1] Respondent admits and I find the following unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act:

> All full-time and regular part-time local drivers, slaughter and packing house drivers, and sales and/or service drivers employed by Respondent at its Stockton, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

At the times material herein, there were six drivers in the bargaining unit.

[2] Unless otherwise stated, all dates hereafter occurred in 1982.

of products out in far smaller poundage than many of our customers want.

Tate further stated, "To get our prices in line so that the present customer doesn't come pick it up from us or others located closer by, we feel we must lower our delivery cost." In Respondent's proposal, Tate proposed discontinuance of the cost of living allowance (COLA) provided for in the 1979–1982 agreement. On September 27, Respondent proposed a wage reduction of $1 per hour.

On October 1, 1982, Respondent submitted another contract proposal which provided, inter alia, a decrease in the wage rate for new hires, and the elimination of the COLA. On October 15, 1982, Respondent submitted another contract proposal which proposed a "freeze" in COLA as an alternative to its elimination. The proposal further stated that Respondent proposed "to institute the terms and conditions of this proposal on October 18, 1982." On October 27, Tate sent a letter supplementting his August 31 position paper regarding Respondent's position in negotiations. Tate proposed retention of the contract wage rate for 2 years for existing employees and a proposal that newly hired employees receive a wage of 70 percent of scale. This proposal made no provision for COLA. Tate stated, inter alia:

> Our future is being shaped by forces beyond our control that we feel literally forces us to become less a processor and more of a jobber. We must purchase, warehouse and inventory more and more foods that others demand a profit from their processing. All we can expect to add on is a small service charge.
>
> This change in business composition means more of the processing of foods will be done by the giant food conglomerates. Already a number of them not only provide packages as small as we process for our customers, but much, much smaller. Some of them actually deliver right to the door of the customer. Others have warehouses where our customers can make pick-ups.
>
> The end result is that the jobbing business will probably require more employees but with les individual expertise. We feel we must be able to lower our gross margins with the idea of making up for it with increased volume. This means more people with lower wages and more flexibility in their work.
>
> . . . .
>
> We are willing, as we have expressed in detail in writing, to continue to pay substantially the big figures outlined above during this contract, plus continue to pay the amount we are now paying for health insurance, pensions, holidays, sick pay, vacations and the many other "goodies," but we are not willing to increase them during this contract. We also want to start others who want to come here and work at lower wages as we have negotiated in the nearby Bay and other California areas.

It was stipulated that between October 27 and December 6, Respondent's final contract proposal was presented to the Union's membership for ratification and that the bargaining unit rejected Respondent's contract proposal. On November 30, Respondent filed a petition in Case 32-RM-288 alleging that it had a good-faith doubt of the Union's continued majority.[3] Thereafter, on December 6, 1982, at a bargaining session conducted at the offices of the Federal Mediation and Conciliation Service, Ace Hatten, the Union's president, told Respondent's negotiators that bargaining had to begin "from scratch" in light of the employees' rejection of the contract. Hatten presented Respondent with the following request for information at issue herein:

> Pursuant to legal advice, we find it is now imperative that you furnish this local Union with the following economic data.
>
> Yes, I understand you stated in your letter dated August 31, 1982, that you are not pleading economic proverty, however, this local Union differs with you as to our right to the data requested. As representatives of your employees we have every right to know the financial status of your company before we can make the drastic roll backs in wages, fringe benefits and or working conditions you are demanding in your proposals. Therefore, we are demanding you make this information available to us as soon as possible:
>
> 1. Documents submitted by the employer to banks by the employer's obtaining loans including projected balance sheets and income statements.
>
> 2. List of buildings and land owned or leased by the employer's business, including a statement of their market value, and information on lease terms and conditions.
>
> 3. Financial statements for three years prior, as well as tax returns and current financial statement.
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> 4. Depreciation schedules for all depreciable assets, as well as current market values for these assets.
>
> 5. Analysis of working capital for the last three years.
>
> 6. Organization chart of all supervisory and executive employees, and a schedule of their total compensation.
>
> 7. Schedule of total compensation to officers, managers, directors and/or owners.
>
> 8. Employment contracts, life insurance policies and loans for officers, managers, directors and/or owners.
>
> 9. Expense reports submitted by officers, managers, directors and/or owners.
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> 10. Information on pension and/or retirement plans in which union members are excluded.
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> 11. List of autos owned or leased by the company.
>
> 12. List of leisure items such as club memberships and vacation homes provided by the company to executives. . . .

[3] Processing of the representation petition was "blocked" by the instant unfair labor practice charge.

B. *Respondent's Defense*

Respondent admits that it has refused to furnish the above-requested information. It is the position of Respondent that it has not placed the financial status of the Company in issue and, therefore, the information requested by the Union was not relevant to negotiations at issue herein.

John Craig, Respondent's vice president, testified that Respondent is a small business which processes beef and sells it, as well was several pass-through items,[4] to the hotel, restaurant, and institutional (HRI) section of the food market. During negotiations Craig or Tate explained to the Union that Respondent sought absolute control over its operations and fixed and identifiable labor costs. Respondent told the Union that it expected that it would become more of a "jobber," dealing primarily with pass-through items, and less of a processor. Further, Respondent took the position that the job of driver was "not worth more" than its wage proposals. Respondent simply stated that it was offering what the job was worth and what it was willing to pay. Finally, Craig testified that Respondent possessed no documents which would substantiate its statements regarding its expected change from processor to jobber. Respondent's claim concerning its changing role was based on Craig's opinion and not on any objective facts.

C. *Analysis and Conclusions*

It is well settled that an employer has a statutory obligation to provide a union, on request, with relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). In determining whether an employer is obligated to supply particular information, the question is only whether there is a "probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and reponsibilities." *NLRB v. Acme Industrial Co.*, supra at 437. As the Supreme Court has stated, the disclosure obligation is measured by a liberal "discovery-type standard," not a trial-type standard, of relevance. Ibid.

In *Truitt Mfg.*, supra, the Supreme Court held that financial information is relevant to negotiations in which an employer claims a financial inability to pay a union wage demand. The Court stated:

> Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to any an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. And it would certainly not be farfetched for a trier of fact to reach the conclusion that bargaining lacks good faith when an employer mechanically repeats a claim of inability to pay without making the slightest effort to substantiate the claim. [351 U.S. at 152-153.]

Following *Truitt*, the Board and the Courts have held that an employer is not obligated to demonstrate that it is unable to raise wages unless it first claims such an inability. *Pine Industrial Relations Committee*, 118 NLRB 1055 (1957), enfd. 263 F.2d 483 (D.C. Cir. 1959); *United Furniture Workers of America v. NLRB*, 388 F.2d 880, 882 (4th Cir. 1967); *N. Y. Printing Pressmen v. NLRB*, 538 F.2d 496 (2d Cir. 1976).

The Board has expanded the application of *Truitt* to situations where the employer has not specifically claimed poverty but has in some manner expressed an inability to afford the union's demands. For example, in *Taylor Foundry Co.*,[5] the Board found that the respondent-employer's assertion that it would have to go out of business if it gave a wage increase "amounted to a clear claim of financial inability." In *Western Wirebound Box Co.*,[6] the Board expanded *Truitt* to require an employer to supply figures to justify its claimed fear of a competitive disadvantage if it met the union's demands. In *Steelworkers v. NLRB*,[7] Chief Justice Burger, then writing for the United States Court of Appeals for the District of Columbia, stated:

> The Company asserts that a claim of inability to pay is not shown when the Company merely claims that the increases will prevent it from competing. But the inability to compete is merely the explanation of why the Company could not afford an economic benefit.

Inability to pay a union demand need not be expressed in any set formula before the obligations set forth in *Truitt* come into play. For example, in *Milbin Printing*,[8] the Board held that an employer had not claimed financial inability by his statements during negotiations that his desire to maintain a "proper balance" for his business did not permit him to "reach the union's numbers." The Court of Appeals for the Second Circuit reversed, stating that the plain English meaning of the employer's words was an inability to pay. The court found that the employer had clearly raised the issue of its ability to afford the union's demands. The court said that the Board interpreted the employer's remarks to mean that he "wouldn't" pay the union's demands but that the employer had really said he "couldn't" pay.[9] However, in *Vore Cinema Corp.*, 254 NLRB 1288 (1981), the Board adopted an administrative law judge's conclusion that the offer of reduced wages is not the equivalent of a plea of inability to pay. The judge stated (254 at 1292):

[4] A pass-through item is something which Respondent purchases, does not process or otherwise alter, and subsequently resells to its own customers.

[5] 141 NLRB 765 (1963), enfd. 338 F.2d 1003 (5th Cir. 1964).

[6] 145 NLRB 1539 (1964), enfd. 356 F.2d 88 (9th Cir. 1966).

[7] 401 F.2d 434 (1968).

[8] 218 NLRB 223 (1975), revd. and remanded sub nom. *N. Y. Printing Pressmen v. NLRB*, 538 F.2d 496 (2d Cir. 1976).

[9] 538 F.2d at 501. Compare *United Fire Proof Warehouse Co. v. NLRB*, 356 F.2d 494, 498 (7th Cir. 1966) (where the Board found that the employer said he "can't" and the court found that the employer said he "won't").

> The General Counsel cited no case, and my own research turned up none, which can establish that an employer's offer which might reduce earnings or which might otherwise inure to the employer's benefit brings a case within the ambit of *Truitt.*

Applying the above case law to the facts of the instant case, the issues are whether Respondent made the type of claim that it would be required to substantiate and whether the items requested by the Union are relevant to that claim. Respondent's explanation of its wage and benefit package was based on two points. First, Respondent claimed that its position in the market was changing and as a result it had less need for skilled employees. Second, Respondent bluntly stated that it did not believe that the employees' services were worth more than it was offering to pay. The second of these explanations clearly raises no obligation to furnish financial information. Respondent simply stated it "wouldn't" pay what the Union requested and was seeking a bargaining more to its benefit. As stated above, the offer of reduced wages does not bring the case within the ambit of *Truitt.*

The General Counsel argues that Respondent's assertion that its competitors would force it to become more of a jobber than a processor equates with an inability-to-pay claim apparently because such a change would have a negative financial impact. Respondent claimed that due to competition the nature of its business would change, i.e., Respondent would reduce its processing of beef operations and to a larger extent simply deliver the products as a jobber. Accordingly, Respondent claimed its labor needs would change, i.e., it would require more unskilled workers. However, the Union did not request that Respondent substantiate these claims. Rather, the Union requested specific information concerning Respondent's financial status "before its could agree to such financial concessions."

Had the Union requested that Respondent substantiate its claims regarding its changing role in the industry, this case would be very different. However, the information requested by the Union was not relevant to Respondent's bargaining stance. It is this deficiency in the case that the General Counsel has failed to address. While the General Counsel has focused on Respondent's assertions during bargaining, she has simply assumed that the information requested was relevant to "supporting and verifying [Respondent's] economic claims that future economic circumstances compel present wage concessions in order to remain competitive." As can be readily seen, the information requested is relevant to Respondent's general financial health.[10] However, Respondent never put its financial health in issue, rather it placed its changing role from processor to jobber in issue. The requested information apparently was not intended to and does not pertain to the claim advanced by Respondent during negotiations.

In this case, the Union's request did not meet Respondent's assertions regarding its competitors' operations or its change in operation from processing to jobbing. The information requested would not reasonably be expected to show the accuracy or inaccuracy of Respondent's claims. Thus, the information could not be said to be relevant to the instant negotiations. It follows that Respondent could not be found to have violated its statutory obligation to bargain in good faith by failing to provide the information requested.

CONCLUSIONS OF LAW

1. The Respondent, Craig & Hamilton Meat Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union, General Teamsters Local 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. The General Counsel has failed to establish that Respondent had a statutory obligation to furnish the financial records requested by the Union.
4. Respondent has not violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

It is ordered that the complaint be dismissed in its entirety.

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[10] Items 1 through 5 and 11 of the Union's request are relevant to the general financial health of Respondent. The General Counsel concedes, on brief, that with respect to items 6, 7, 9, and 12 the Union would, at best, be entitled to the aggregate figures and not the specific details requested. With respect to items 8 and 10, the General Counsel accepts Respondent's representation that no such documents exist.

[11] All outstanding motions inconsistent with this recommended Order hereby are denied. If no exceptions are filed as provided in Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.